



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Apr 05 2022

April 5, 2022
Sent via email

STATE CLEARINGHOUSE

George Cardenas
Engineering Manager
Phelan Pinon Hills Community Services District
4176 Warbler Road
Phelan, CA 92371

Subject: Mitigated Negative Declaration
Phelan Pinon Hills Community Services District Wells No.15 and 16
Development Project
State Clearing House No. 2022030213

Dear Mr. Cardenas:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the Phelan Pinon Hills Community Services District (PPHCSD) for the Phelan Pinon Hills Community Services District Wells No.15 and 16 Development Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

ASSEMBLY BILL (AB) 819

Assembly Bill (AB) 819 was signed into law by Governor Gavin Newsom on July 16, 2021, and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearing House (SCH) at Office of Planning and Research (OPR). Thus, as of January 1, 2022, lead agencies must take the following actions to comply with CEQA:

- File on CEQAnet – Draft Environmental Impact Reports (DEIR), proposed Negative Declarations (ND), proposed Mitigated Negative Declarations (MND) must be filed electronically on CEQAnet (<https://ceqanet.opr.ca.gov/>) – as opposed to submitting hard copies.
- Post on Agency website – Draft, proposed, and final environmental documents – including DEIRs, EIRs, NDs, MNDs – as well as any Notice of Preparation (NOP), Notice of Determination (NOD), Notice of Completion, or Notice of Scoping Meetings must be posted on the lead agency's website if it has one. Also, Notices of Availability (NOAs) and hearings related to the DEIR or ND are required to be posted on the lead agency's website, in addition to prior methods of giving notice.
- File and Post with County – NODs must be filed electronically with the county clerk if electronic filings are offered by the county. There is an option to post NODs either in the county clerk's office or on the county clerk's website for a period of 30 days. Additionally, NOPs and NOAs will need to be posted on the county clerk's website and physically, by hard copy, in the county clerk's office.
- Option to email NOPs – If an EIR is required, any NOP may be emailed, rather than mailed, to each entity requiring personal notice – the responsible agency, any public agency with jurisdiction over natural resources affected by the project, and OPR.
- State Agency Filings – State lead agencies are required to file NODs and NOEs electronically on CEQAnet and no longer need to submit hard copies. The filed notice must be available for public inspection on the OPR website for not less than 12 months.
- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

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PROJECT DESCRIPTION SUMMARY

The Project site is located in the City of Phelan, San Bernadino County, California. The Project proposes the development of two new wells: Well No.15 and Well No. 16. Well No. 15 is proposed to be located at Latitude 34.519263 N and Longitude - 117.582832 W at the northwest corner of the intersection of Crudup Road and Azalea Road on Assessor's Parcel Number (APN) 3101-031-04. Well No.16 is proposed to be located at Latitude 34.488218 N and Longitude -117.573450 W north of the intersection of Sheep Creek Road and Cayucos Drive on APN 3098-071-05.

Timeframe: Construction is proposed to begin in the spring of 2022, with both wells becoming operational by the end of 2022.

COMMENTS AND RECOMMENDATIONS

CDFW has several concerns regarding the Project's MND. CDFW is concerned that the MND does not include any mitigation measures (MM), including but not limited to biological (BIO) measures. Instead, the MND states that all mitigation measures identified in the Initial Study (IS) are proposed for adoption and that these measures will be implemented if the MND is adopted.

The Project may have potentially significant impacts on fish and wildlife resources and therefore the following considerations should be included in the final and adopted MND (termed hereafter as 'final MND'): 1) presence of western Joshua tree (*Yucca brevifolia*), a Candidate for Threatened California Endangered Species Act (CESA)-listed species on the Project site, 2) Fish and Game Code section 1602 resources on the Project site, 3) the potential presence for burrowing owl (*Athene cunicularia*), a species of special concern, on the Project site, and 4) the potential presence of desert tortoise (*Gopherus agassizii*), a state-threatened, proposed endangered species under CESA on the Project site. To ensure adequate mitigation for the Projects potentially significant impacts on fish and wildlife resources, the final MND should consider all the avoidance, minimization and mitigation measures recommended by CDFW in this letter.

CDFW determined that based on review of aerial photography from the California State Water Resources Control Board, APN 3101-031-04 contains at least one ephemeral drainage feature adjacent to Well No. 15 and APN 3098-071-05 contains at least two ephemeral drainage features adjacent to Well No. 16. CDFW appreciates that a Jurisdictional Delineation (JD) was conducted. The JD recognizes that the ephemeral stream located on APN 3098-071-05 and the ephemeral steam located on APN 3101-031-04 are subject to Fish and Game Code section 1602. In addition, CDFW identified a third ephemeral stream located on APN 3098-071-05, also subject to Fish and Game Code section 1602. CDFW is not clear on whether Well No. 15 and Well No. 16 will extract water from the adjacent ephemeral streams and therefore cannot agree with the JD that all Project related impacts (permanent and temporary) will be restricted to outside of Fish and Game Code section 1602 resources and that, therefore, the Project

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will not result in any impacts to “waters of the State”. PPHCSD should submit to CDFW a Lake or Streambed Alteration (LSA) Notification, as outlined in MM BIO-9 below (see 7. LSA Notification) to obtain written correspondence from CDFW stating that either notification under section 1602 of the Fish and Game Code is not required for the Project, or that notification is required and a CDFW-executed Lake and Streambed Alteration Agreement (LSAA) will need to be obtained. Please note that CDFW’s issuance of an LSAA, or written verification from CDFW that a LSAA is not needed, is an administrative action subject to CEQA; however, if an MND is not adopted, the IS cannot be used by CDFW to demonstrate compliance with CEQA and, consequently, CDFW cannot issue an LSAA.

CDFW determined based on aerial imagery and on the Biological Resources Assessment (BRA), that WJT are present within the immediate vicinity of proposed Well No. 16 on APN 3098-071-05. CDFW is not clear whether WJT is present in the vicinity of proposed Well No. 15 on APN 3101-031-04, since no focused surveys were conducted to quantify WJT presence on either APN 3101-031-04 or APN 3098-071-05. If the Project has the potential to result in “take” (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of WJT, CDFW recommends that PPHCSD: (1) obtain a CESA Incidental Take Permit (ITP), (2) quantify in the final MND WJT presence, (3) assess direct impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT from destruction or modification of habitat at the Project location, as described in item six below (see 6. WJT), and (4) adopt MM BIO-8 below (see 6. WJT), which describes the CESA and ITP processes.

The BRA states that focused surveys were conducted for desert tortoise in January 2022. However, surveys were completed outside of the desert tortoise active season (active season is typically April to May or September to October) when desert tortoise are unlikely to be detected. The BRA concludes that “No desert tortoise individuals or sign including desert tortoise burrows, scat, carcasses or other sign were observed”. CDFW cannot agree with this conclusion since surveys were conducted outside of the desert tortoise active season. CDFW appreciates that MM BIO-2 requires pre-construction desert tortoise surveys, although CDFW is concerned that MM BIO-2 lacks the appropriate CESA Incidental Take authorization if desert tortoise were to be found on-site during the pre-construction surveys. To address potential take of desert tortoise, CDFW recommends the below revisions to MM BIO-2 (see 2. Desert Tortoise), that PPHCSD should include in the final MND.

CDFW appreciates that a habitat assessment for burrowing owl was conducted even though the habitat assessment yielded “no observation of burrowing individuals, appropriately sized mammal burrows, burrow surrogates, or sign including castings, feathers or whitewash”. CDFW also appreciates the inclusion of MM BIO-4, which requires a pre-construction burrowing owl survey, and MM BIO-5, which considers avoidance of nesting burrowing owls, an impact assessment, passive relocation, and mitigation in accordance with the 2012 Staff Report on Burrowing Owl Mitigation

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(California Department of Fish and Wildlife, 2012). CDFW offers mitigation and survey recommendations for MM BIO-4 and MM BIO-5 below (see 4. Burrowing Owl).

CDFW is concerned regarding the adequacy of MM BIO-7 proposed by PPHCSD to mitigate potential impacts to nesting birds, since MM BIO-7 defers guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting to a Nesting Bird Plan (NBP), which CDFW is not required to be signatory to. Thus, CDFW recommends revisions to MM BIO 7, as per below (see 5. Nesting Birds).

CDFW is further concerned that the analysis of plants conducted on the Project site is not sufficient to form a complete inventory of rare plants within the Project area, since the plant surveys performed were not floristic in nature, as recommended by CDFW in MM BIO-10 below (see 8. Sensitive Plants).

CDFW offers the mitigation measures presented below along with comments/recommendations to assist PPHCSD in adequately mitigating the Project's potentially significant impacts on WJT, desert tortoise, nesting birds, burrowing owl, sensitive plants, and Fish and Game Code section 1602 resources. CDFW requests that PPHCSD adopt the mitigation measures listed below and also found in Attachment 1 (Mitigation Monitoring and Reporting Program):

Biological Measures

1. Workers Environmental Awareness Program (WEAP). CDFW recommends MM BIO-1 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

BIO-1

A qualified biologist shall develop a Worker Environmental Awareness Program (WEAP) that ~~shall will~~ include information on general and special status species, **including but not limited to western Joshua tree (*Yucca brevifolia*), burrowing owl (*Athene cunicularia*), and desert tortoise (*Gopherus agassizii*)** within the project area, identification of these species and their habitats, **current conservation status (i.e., rare, imperiled, vulnerable, CESA-listed)**, techniques and mitigation measures that **shall be** being implemented during construction to avoid impacts to species, **such as western Joshua tree, burrowing owl, desert tortoise**, consequences of killing or injuring an individual of a **CESA-listed** species, and reporting procedures when encountering **CESA-listed** or sensitive species. Construction crews, foremen, and other personnel potentially working on site will attend this education program and place their name on a sign-in sheet. This briefing shall include provisions of any requirements required for the project. The contractor shall implement Worker Environmental Awareness Program (WEAP) training on the first day of work and periodically throughout construction as needed.

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To ensure that no net loss of function and value will occur as a result of the Project, site facilities, equipment staging areas, and excavated soil stockpiles shall be ~~microsit~~ **placed** outside of **Fish and Game Code section 1602 resources, including** stream channels and **associated** floodplain areas. Buffer areas shall be identified, and exclusion fencing shall be used to protect **Fish and Game Code section 1602 resources** the water resource and to prevent unauthorized vehicles or equipment from entering or otherwise disturbing **Fish and Game Code section 1602 resources** the surface waters. Equipment shall use existing roadways **or new roads, outside of Fish and Game Code section 1602 resources** to the extent feasible.

2. Desert Tortoise. To address potential impacts to desert tortoise, CDFW recommends the following revisions to MM BIO-2 (edits are in ~~strikethrough~~ and **bold**):

BIO-2

During the desert tortoise active season (April to May or September to October) ~~P~~**reconstruction surveys for Desert Tortoise shall be conducted no more than 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology** ~~14 days prior to new ground disturbance within each phase of development to verify that Mojave desert tortoise remains absent from the project area. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to construction start. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence of desert tortoise, the Project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.~~

3. Biological Monitor. CDFW recommends MM BIO-3 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

BIO-3

A qualified biological monitor **approved by CDFW** shall be present during **all Project** ~~the initial ground disturbing activities (clearing, grubbing and initial grading)~~ to ensure no **burrowing owl (*Athene cunicularia*), desert tortoise (*Gopherus agassizii*), or other sensitive species** resources wandered onto the site and to ensure no impacts will result **to sensitive species during Project activities** ~~construction.~~

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4. Burrowing Owl. CDFW appreciates that MM BIO-4 to BIO-5 closely follow previous CDFW-suggested mitigation measures for burrowing owl and thus offers the below minor revisions to MM BIO-4-MM to BIO-6 (edits are in ~~strike through~~ and **bold**):

BIO-4

Preconstruction presence/absence surveys for burrowing owl shall be conducted no less than 14 days prior to **initiation of any Project onsite** ~~ground disturbing~~ activity by a qualified biologist. The burrowing owl surveys shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife in the "California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation." In the event this species **and sign thereof** is not identified within the Project limits, no further mitigation is required, and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to commencement of Project activities. If during the preconstruction survey, ~~the~~ burrowing owl **or sign thereof** is found ~~to occupy the on-~~ site, Mitigation Measure BIO-~~25~~ shall be required.

BIO-5

If burrowing owls are identified during the **pre-construction presence/absence** survey period **detailed in BIO-4, CDFW shall be notified immediately** and **Phelan Pinon Hills Community Service District (PPHCSD)** and/or the Applicant shall take the following actions to offset impacts prior to **Project initiation** ~~ground disturbance~~:

Active nests within the areas scheduled for disturbance or degradation shall be avoided **by establishing and flagging avoidance buffers according to "California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation"** until fledging has occurred **and/or juvenile owls are no longer dependent on the burrows**, as confirmed by a qualified biologist. Following fledging **and confirmation that juvenile owls are no longer dependent on the burrows**, owls may be passively relocated by a qualified biologist, as described below.

If impacts on occupied burrows are unavoidable, onsite passive relocation techniques may be used if approved by the CDFW to encourage owls to move to alternative burrows provided by PPHCSD and/or the Applicant outside of the impact area. **Passive relocation shall only be implemented if a qualified biologist has determined that there are no nesting owls and/or juvenile owls are no longer dependent on the burrows.**

If relocation of the owls is approved for the site by CDFW, CDFW shall require PPHCSD and/or the Applicant to hire a qualified biologist to prepare a plan for relocating the owls to a suitable site and conduct an impact assessment. A qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example

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Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite.

The relocation plan must include all of the following and as indicated in Appendix E:

- The location of the nest and owls proposed for relocation.
- The location of the proposed relocation site.
- **Land owner approval to relocate owls to the relocation site.**
- The number of owls involved and the time of year when the relocation is proposed to take place.
- The name and credentials of the biologist who will be retained to supervise the relocation.
- The proposed method of capture and transport for the owls to the new site.
- A description of site preparation at the relocation site (e.g., enhancement of existing burrows, creation of artificial burrows, one-time or long-term vegetation control).

The applicant shall conduct an impact assessment, in accordance with the Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio.

Prior to passive relocation, suitable replacement burrows site(s) shall be provided at a ratio of **no less than 2:1** and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW and the PPHCSD and/or the Applicant. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted and a reporting plan shall be prepared. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.

A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.

BIO-6

Burrowing owl, **along with desert tortoise, western Joshua tree, and other sensitive species found on the Project site**, shall be included as one of the species covered in the WEAP that all construction crews, foremen, and other project personnel potentially working on site shall attend prior to the first day of work.

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5. Nesting Birds. CDFW offers the following revisions to BIO-7 (edits are in ~~strikethrough~~ and **bold**):

BIO-7

All Project activities on-site shall be conducted outside of the nesting bird season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1) to the maximum extent feasible. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.

If Project activities begin during the nesting bird season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), ~~Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to Project initiation. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests containing eggs or young are found during the preconstruction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground and discussed in the WEAP. Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. To avoid impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1).~~ **Nest buffers are species-specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

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6. WJT. If the Project has the potential to result in take of WJT, CDFW recommends the final MND quantify WJT presence on site through focused surveys. The WJT survey results should be included in the final MND and should identify and provide: a) the GPS coordinates and accompanying map of each WJT within the Project area; b) the age class of each WJT; c) the number of clonal WJT associated with each parent plant and the methodology used to make this determination; d) a unique numbering system for each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Project site.

Furthermore, the final MND should include: 1) an impact analysis assessing potential Project impacts to WJT within a 186-foot buffer zone of WJT (Vander Wall et al. 2006), 2) implementing a 300-foot buffer around WJT not scheduled for removal to avoid impacts to WJT, and 3) a mitigation strategy for Project impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT. Indirect impacts to WJT include destruction of WJT's obligate pollinating moth (yucca moth; *Tegeticula synthetica*), while it is dormant in the soil or while it is in its flight phase, which would impact the ability of WJT to sexually recruit new individuals (Sweet et al. 2019). Destruction or modification of WJT habitat in the Project area could also disrupt the seed dispersal behavior of rodents, which is the primary way that WJT seeds are buried at a soil depth suitable for successful germination (Waitman et al. 2012). Destruction or modification of WJT habitat in the Project area could also eliminate nurse plants that are critical for WJT seedling survival (Brittingham and Walker 2000).

CDFW requests the final MND 1) adequately identify and disclose the Project's impacts (i.e., direct, indirect, and cumulative) to WJT as noted above, 2) propose mitigation to offset those impacts to WJT, and 3) demonstrate that impacts to WJT are not adverse and, for the purposes of CESA permitting, are fully mitigated. Further, CDFW recommends the adoption of MM BIO-8 below:

BIO- 8

CDFW recommends that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of western Joshua tree (WJT), a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection of WJT through establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed or financial security must be provided before starting any Project activities. In order to execute an ITP, CDFW requires

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documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof that the document has been circulated.

7. LSA Notification. CDFW recommends that PPHCSD adopt MM BIO-9 below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or*, if notification under section 1602 of the Fish and Game Code is required for the Project, to obtain a CDFW-executed Lake and Streambed Alteration Agreement:

BIO-9

Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or* the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

8. Sensitive Plants. CDFW recommends MM BIO-10 below be added to the final MND to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts:

BIO-10

Prior to Project implementation, and during the appropriate season, PPHCSD and/or the Applicant shall conduct botanical field surveys following the Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status.

If any rare plants or sensitive vegetation communities are identified, PPHCSD and/or the Applicant shall either fully avoid the plant(s), with an appropriate buffer established by the botanist and marked in the field (i.e. fencing or

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flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed).

If the Project has the potential to impact a State-listed species, PPHCSD and/or the Applicant should apply for a CESA ITP with CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in Environmental Impact Reports and Negative Declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, will impact fish and/or wildlife, and assessment of CEQA filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the CEQA filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW requests that PPHCSD include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on the MND for the PPHCSD Wells No.15 and 16 Development Project (SCH No. 2022030213) and hopes our comments will assist the PPHCSD in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Corina Jimenez, Environmental Scientist at Corina.Jimenez@wildlife.ca.gov.

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ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

Sincerely,

DocuSigned by:

Alisa Ellsworth

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Alisa Ellsworth
Environmental Program Manager

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1</p> <p>A qualified biologist shall develop a Worker Environmental Awareness Program (WEAP) that shall include information on general and special status species, including but not limited to western Joshua tree (<i>Yucca brevifolia</i>), burrowing owl (<i>Athene cunicularia</i>), and desert tortoise (<i>Gopherus agassizii</i>) within the project area, identification of these species and their habitats, current conservation status (i.e., rare, imperiled, vulnerable, CESA-listed), techniques and mitigation measures that shall be implemented during construction to avoid impacts to species, such as western Joshua tree, burrowing owl, desert tortoise, consequences of killing or injuring an individual of a CESA-listed species, and reporting procedures when encountering CESA-listed or sensitive species. Construction crews, foremen, and other personnel potentially working on site will attend this education program and place their name on a sign-in sheet. This briefing shall include provisions of any requirements required for the project. The contractor shall implement Worker Environmental Awareness Program (WEAP) training on the first day of work and periodically throughout construction as needed.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>Project site facilities, equipment staging areas, and excavated soil stockpiles shall be placed outside of Fish and Game Code section 1602 resources, including associated floodplain areas. Buffer areas shall be identified, and exclusion fencing shall be used to protect Fish and Game Code section 1602 resources and to prevent unauthorized vehicles or equipment from entering or otherwise disturbing Fish and Game Code section 1602 resources. Equipment shall use existing roadways or new roads, outside of Fish and Game Code section 1602 resources.</p>		
<p>BIO-2</p> <p>During the desert tortoise active season (April to May or September to October) preconstruction surveys for Desert Tortoise shall be conducted no more than 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to construction start. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence of desert tortoise, the Project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-3</p> <p>A qualified biological monitor approved by CDFW shall be present during all Project activities to ensure</p>	<p>Entire project</p>	<p>Project Proponent</p>

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<p>no burrowing owl (<i>Athene cunicularia</i>), desert tortoise (<i>Gopherus agassizii</i>), or other sensitive species wandered onto the site and to ensure no impacts will result to sensitive species during Project activities.</p>		
<p>BIO-4</p> <p>Preconstruction presence/absence surveys for burrowing owl shall be conducted no less than 14 days prior to initiation of any Project activity by a qualified biologist. The burrowing owl surveys shall be conducted pursuant to the recommendations and guidelines established by the California Department of Fish and Wildlife in the “California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation.” In the event this species and sign thereof is not identified within the Project limits, no further mitigation is required, and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to commencement of Project activities. If during the preconstruction survey, burrowing owl or sign thereof is found on-site, Mitigation Measure BIO-5 shall be required.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-5</p> <p>If burrowing owls are identified during the pre-construction presence/absence survey period detailed in BIO-4, CDFW shall be notified immediately and Phelan Pinon Hills Community Service District (PPHCSD) and/or the Applicant shall take the following actions to offset impacts prior to Project initiation:</p> <p>Active nests within the areas scheduled for disturbance or degradation shall be avoided by establishing and flagging avoidance buffers according to “California Department of Fish and Wildlife 2012 Staff Report on Burrowing Owl Mitigation” until fledging has occurred and/or juvenile owls are no longer dependent on the burrows, as confirmed by a qualified biologist. Following fledging and</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>confirmation that juvenile owls are no longer dependent on the burrows, owls may be passively relocated by a qualified biologist, as described below.</p> <p>If impacts on occupied burrows are unavoidable, onsite passive relocation techniques may be used if approved by the CDFW to encourage owls to move to alternative burrows provided by PPHCSD and/or the Applicant outside of the impact area. Passive relocation shall only be implemented if a qualified biologist has determined that there are no nesting owls and/or juvenile owls are no longer dependent on the burrows.</p> <p>If relocation of the owls is approved for the site by CDFW, CDFW shall require PPHCSD and/or the Applicant to hire a qualified biologist to prepare a plan for relocating the owls to a suitable site and conduct an impact assessment. A qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) to the CDFW for review/approval prior to the commencement of disturbance activities onsite.</p> <p>The relocation plan must include all of the following and as indicated in Appendix E:</p> <ul style="list-style-type: none">• The location of the nest and owls proposed for relocation.• The location of the proposed relocation site.• Land owner approval to relocate owls to the relocation site.• The number of owls involved and the time of year when the relocation is proposed to take place.• The name and credentials of the biologist who will be retained to supervise the relocation.• The proposed method of capture and transport for the owls to the new site.		
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<p>• A description of site preparation at the relocation site (e.g., enhancement of existing burrows, creation of artificial burrows, one-time or long-term vegetation control).</p> <p>The applicant shall conduct an impact assessment, in accordance with the Staff Report on Burrowing Owl Mitigation prior to commencing Project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio.</p> <p>Prior to passive relocation, suitable replacement burrows site(s) shall be provided at a ratio of no less than 2:1 and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW and the PPHCSD and/or the Applicant. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted and a reporting plan shall be prepared. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years.</p> <p>A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW.</p>		
<p>BIO-6</p> <p>Burrowing owl, along with desert tortoise, western Joshua tree, and other sensitive species found on the Project site, shall be covered in the WEAP that all construction crews, foremen, and other project</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>personnel potentially working on site shall attend prior to the first day of work.</p>		
<p>BIO-7</p> <p>All Project activities on-site shall be conducted outside of the nesting bird season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1) to the maximum extent feasible. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.</p> <p>If Project activities begin during the nesting bird season (generally, raptor nesting season is January 1 through September 15; and passerine bird nesting season is February 1 through September 1), nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to Project initiation. Preconstruction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests containing eggs or young are found during the preconstruction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground and discussed in the WEAP. Nest buffers are species-specific and shall be at least 100 feet for passerines and 300 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>BIO-8</p> <p>CDFW recommends that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “take” (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of western Joshua tree (WJT), a Candidate for Threatened CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection of WJT through establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed or financial security must be provided before starting any Project activities. In order to execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof that the document has been circulated.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-9</p> <p>Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project applicant</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>		
<p>BIO-10</p> <p>Prior to Project implementation, and during the appropriate season, PPHCSD and/or the Applicant shall conduct botanical field surveys following the Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status.</p> <p>If any rare plants or sensitive vegetation communities are identified, PPHCSD and/or the Applicant shall either fully avoid the plant(s), with an appropriate buffer established by the botanist and marked in the field (i.e. fencing or flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed).</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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If the Project has the potential to impact a State-listed species, PPHCSD and/or the Applicant should apply for a CESA ITP with CDFW.		
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